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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 PAUL A. WESBECHER,

No. CIV S-04-0807-FCD-CMK-P

12 Petitioner,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 DANIEL FOY,

15 Respondent.
16 _____/

17 Petitioner is proceeding pro se and in forma pauperis in this petition for a writ of
18 habeas corpus, filed pursuant to 28 U.S.C. § 2254. On October 20, 2005, the court directed
19 petitioner to submit a status report within 30 days. Petitioner was warned that failure to comply
20 may result in the dismissal of this action for lack of prosecution and failure to comply with court
21 rules and orders. To date, petitioner has not complied.

22 The court must weigh five factors before imposing the harsh sanction of
23 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.
24 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's
25 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)
26 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on

1 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,
2 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an
3 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.
4 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is
5 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,
6 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to
7 follow local rules. See Ghazali, 46 F.3d at 53.

8 Having considered these factors, and in light of petitioner's failure to file a status
9 report as directed by the court's October 20, 2005, order, the court finds that dismissal of this
10 action is appropriate.

11 Based on the foregoing, the undersigned recommends that this action be
12 dismissed.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court. The document should be captioned "Objections to Magistrate Judge's
17 Findings and Recommendations." Failure to file objections within the specified time may waive
18 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 DATED: December 4, 2005.

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23 **CRAIG M. KELLISON**
24 UNITED STATES MAGISTRATE JUDGE
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